

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANKLIN D. SMITH,

Plaintiff,

v.

JAMES HECK, et al.,

Defendants.

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NO. 3:CV-07-0129  
(JUDGE KOSIK)

**MEMORANDUM**

\_\_\_Before the court is Magistrate Judge J. Andrew Smyser's Report and Recommendation of June 29, 2007, (Doc. 33) in which the Magistrate Judge suggests that we grant the defendants' motions to dismiss and dismiss the plaintiff's complaint. For the reasons that follow we will adopt the Magistrate Judge's Report and Recommendation, grant the various defendants' motions, and dismiss the plaintiff's complaint.

**BACKGROUND**

A thorough review of the facts of this case is included in the Magistrate Judge's Report and Recommendation. We will not restate the entire history here. Rather, we will include only those facts relevant to our review of the Report and Recommendation.

The defendants all filed motions to dismiss the plaintiff's complaint. (Docs. 12, 14, 15, and 20). Common to all the motions was the argument that the defendants were immune from suit. Magistrate Judge Smyser determined that the defendants were entitled to qualified immunity and suggested that this court dismiss the plaintiff's

complaint on that basis.

The plaintiff did not file objections to the Report and Recommendation. An entry on the docket reveals that the Report and Recommendation sent to the plaintiff at Moshannon Valley Correctional Institute was returned to the Clerk of Court as undeliverable. A notation on the envelope appears to read that the plaintiff was released to the INS.

### **DISCUSSION**

If no objections are filed to a Magistrate Judge's Report and Recommendation, the court need not conduct a *de novo* review of the plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d. Cir. 1987). In this instance, the plaintiff did not object to Magistrate Judge Smyser's Report and Recommendation. Plaintiff appears to have been transferred to the custody of the INS.

The court forwarded the plaintiff the Standing Practice Order in Pro Se Plaintiff Cases on January 25, 2007. (Doc. 3). Section "C" of the Standing Practice Order informed the plaintiff that he was obligated to notify the court of any change of address. Specifically, the Standing Practice Order states:

A pro se plaintiff has the affirmative obligation to keep the court informed of his or her current address. If the plaintiff changes his or her address while this lawsuit is being litigated, the plaintiff shall immediately inform the court of the change, in writing. If the court is unable to communicate with the plaintiff because the plaintiff has

failed to notify the court of his or her address, the plaintiff will be deemed to have abandoned the lawsuit.

(Doc. 3). The plaintiff has not notified this court of his current address. Accordingly, he is deemed to have abandoned the lawsuit. We will rule on the instant Report and Recommendation under the standard applied when a party fails to object to an adverse report and recommendation.

Having examined the Magistrate Judge's Report and Recommendation, we agree with his recommendations. We concur with the Magistrate Judge's analysis of the plaintiff's complaint and find the Magistrate Judge's review of the record to be comprehensive. Specifically, we agree with the Magistrate Judge's conclusion that the defendants are entitled to qualified immunity. We will adopt Magistrate Judge Smyser's Report and Recommendation, grant the defendants' motions to dismiss, and dismiss the plaintiff's complaint.

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NO. 3:CV-07-0129  
(JUDGE KOSIK)

**ORDER**

AND NOW, this 17th day of August, 2007, IT IS HEREBY ORDERED  
THAT:

(1) the Report and Recommendation of Magistrate Judge J. Andrew Smyser  
dated June 29, 2007, (Doc. 33) is **adopted**;

(2) the defendants' motions to dismiss (Docs. 12, 14, 15, and 20) are  
**granted**;

(3) the plaintiff's complaint (Doc, 1) is **dismissed**;

(4) the Clerk of Court is directed to close this case and forward a copy of this  
Memorandum and Order to the Magistrate Judge.

**/s/ Edwin M. Kosik**  
United States District Judge